

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6
7 PURDUE PHARMA L.P., Case No. 19-23649-rdd

8
9 Debtor.

10 - - - - - x

11
12 U.S. Bankruptcy Court

13 300 Quarropas Street

14 White Plains, New York 10601

15
16 March 2, 2020

17 10:01 AM

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19
20 B E F O R E :

21 HON ROBERT D. DRAIN

22 U.S. BANKRUPTCY JUDGE

1 Hearing re: Notice of Hearing/Notice of Telephonic Hearing
2 Scheduled for March 2, 2020, at 10:00 a.m. (Prevailing
3 Eastern Time)

4
5 Hearing re: Notice of Agenda/Agenda for March 2, 2020
6 Hearing (related document(s) 855)

7
8 Hearing re: Motion to Appoint/Motion for Entry of an Order
9 Appointing Mediators (related document(s) 853)

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25 Transcribed by: Dawn South

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Okay. Good
4 morning. In re: Purdue Pharma L.P., et al.

5 MR. HUEBNER: Good morning, Your Honor. For the
6 record Marshall Huebner and Jim McClammy of Davis Polk for
7 the debtor.

8 THE COURT: Good morning. I trust everyone on the
9 phone will identify themselves if they speak.

10 I have just one third party in the courtroom who I
11 think may be a reporter.

12 But this is the hearing on the debtors' motion for
13 an order appointing mediators for a specific issue or
14 issues, and the companion motion to shorten notice for the
15 underlying motion.

16 MR. HUEBNER: Yeah. So Your Honor, I will turn
17 the (indiscernible - 10:02:11) over to Mr. McClammy,
18 hopefully it can be about a, you know, four-minutes hearing,
19 and since we filed the motion we were also able to
20 (indiscernible - 10:02:20) the final issue on which a couple
21 of parties hadn't yet quite come to a full agreement, but
22 there now is full agreement, there also are no objections
23 either formal or informal. I know that we discussed
24 (indiscernible - 10:02:32) package and sort of wait and see
25 what happens with the underlying motion so I can hopefully

1 or as with the (indiscernible - 10:02:38) motion and the
2 motion to shorten time (indiscernible - 10:02:41) given the
3 lack of objection and the complete consensual nature of the
4 hearing.

5 So with that for hopefully not much longer remarks
6 (indiscernible - 10:02:52) let me turn it over if I may,
7 Your Honor, to Mr. McClammy.

8 THE COURT: Okay.

9 MR. MCCLAMMY: Good morning, Your Honor. For the
10 record Jim McClammy of Davis Polk & Wardwell for the debtor.

11 First we wanted to thank you and your chambers
12 again for making time available for us this morning on a
13 date other than one of our omnibus hearing dates. Having
14 that extra bit of time really did allow the parties to reach
15 consensus on the filing of this motion while at the same
16 time allowing, you know, this important process to commence
17 as soon as possible.

18 And as Mr. Huebner stated, there has been no
19 objections, either formal or informal, to the entry of the
20 mediation order or with respect to the motion to shorten
21 time, and we would respectfully request that the order that
22 accompanied the motion, which was docketed at 853 to shorten
23 time, be entered.

24 THE COURT: Okay. Does anyone --

25 MR. MCCLAMMY: And then --

1 THE COURT: Let me just interrupt you there. Does
2 anyone have anything to say on the motion to shorten besides
3 Mr. McClammy?

4 Okay. I will grant the motion to shorten. As
5 you've noted, the underlying motion was developed after
6 substantial negotiations among the -- among key constituents
7 in these Chapter 11 cases, and the underlying relief, based
8 on the blackline order that I received late last week, is
9 also unopposed.

10 So under those circumstance and the need to move
11 the case along having this hearing on shortened notice is
12 warranted. So I'll grant that motion.

13 MR. MCCLAMMY: Thank you, Your Honor.

14 And then with respect to the motion yourself, Your
15 Honor, you know as this Court has noted on a number of
16 occasions and as the debtors and the other mediation
17 parties, you know, clearly understand, you know, the best
18 path forward is one that avoids costly and time consuming
19 litigation.

20 As you might expect and as we highlighted in the
21 motion papers, there were a number of varied views coming
22 into this process about how we should moving forward, but
23 I'm pleased to say that the hard and thoughtful work of all
24 the mediation parties and their counsel, we've reached
25 agreement on a path forward that's requested in the fully

1 consensual revised form of order that was submitted on
2 Friday with a notice that it's docketed at 887.

3 That order will allow the mediation to commence
4 immediately with the selection of the Honorable Wayne
5 Phillips and Kenneth Kleinberg (ph) at -- you have two of
6 the best mediators in the country as the mediators to help
7 us and the parties with respect to the mediation issue as
8 it's set out in paragraph 3 of the proposed order.

9 The only open issue at the time that we had filed
10 the motion had been one with respect to confidentiality, and
11 that has been dissolved and the resolution of that issue is
12 set forth in the blackline that was attached to the notice
13 at paragraph 11 of docket number 877 -- 887 -- I'm sorry,
14 Your Honor.

15 So along with that revised form of order and the
16 two declarations filed by the proposed mediators setting out
17 certain disclosure, one for the Honorable Wayne Phillips at
18 docket 883, and one for Kenneth Kleinberg at docket number
19 882, unless Your Honor has any questions about the form of
20 order we would respectfully request that the consensual
21 order submitted on Friday be entered so that the parties can
22 move forward with the proposed mediation.

23 THE COURT: Okay. I've reviewed that blacklined
24 order, and I think it properly resolves the one open issue
25 as stated in the motion as to what people can and cannot

1 say, which it does in paragraph 11.

2 Does anyone have anything to say on the underlying
3 motion or the proposed form of order?

4 Okay. I have a couple of points I want to raise
5 with you all. First both mediators are obviously highly
6 regarded and have excellent track records in assisting
7 people to get to the consensus. Probably for that reason
8 neither of them comes with a low price tag, which is fine;
9 however, given the cost of the mediation and the desire I
10 think of all parties to resolve this case promptly, I think
11 it's important to keep the mediation on a relatively fast
12 track, and I don't know how this is being reported to the
13 mediators, but I think it's important for them to keep in
14 mind and make clear to the parties to the mediation.

15 I don't think the order needs to be changed in any
16 way to reflect that, but I hope that that is the game plan
17 for not only the mediators but also the mediation parties.

18 MR. MCCLAMMY: Yes, Your Honor. This is Jim
19 McClammy again for the record.

20 That is something that has been at the forefront
21 of everyone's minds, and the mediators have made sure to
22 clear a number of dates in their schedule and are moving
23 forward quickly, indeed have already set up initial meetings
24 with the mediation parties to talk about how the mediation
25 will proceed.

1 THE COURT: All right.

2 MR. MCCLAMMY: And that's one of the reasons
3 because of the clearing of their schedules that it's
4 reflected in the monthly amount that they're charging.

5 THE COURT: Okay. Very well. And then I have two
6 I think pretty simple points. One is really a question; one
7 is a point.

8 On -- in paragraph 10 the order says that the
9 results of the mediation are non-binding unless the
10 mediation parties agree to be so bound, then it says,
11 provided any settlement agreement reached through mediation
12 and reduced to a writing and signed shall be as binding
13 against each signatory as those reached through litigation.

14 I -- you know, I read this twice and it seemed to
15 me it's probably worth clarifying that this is subject with
16 respect to the debtors to the requirements of Section 363(b)
17 of the Bankruptcy Code and bankruptcy Rule 9019.

18 You can read the language to implicitly say that,
19 binding against EACH signatory as those reached through
20 litigation, but it doesn't really distinguish the debtors
21 have to get court approval.

22 So my suggestion would be to add that language.

23 Secondly --

24 MR. MCCLAMMY: Understood, Your Honor, we'll make
25 the change.

1 THE COURT: Secondly, paragraph 19 says for the
2 avoidance of doubt to the extent any part of this order
3 shall conflict with local Rule 9019-1 or the general order
4 or the Southern District pertaining to mediation, the terms
5 and provisions of this order shall govern.

6 And my only comment on that is the local rule does
7 have in Section 6 -- 6.0 a provision expressly giving
8 mediators immunity from claims.

9 I don't know if this was discussed with the
10 mediator, but I wasn't sure -- it didn't seem to make sense
11 to me to exclude that provision. And unless the parties
12 wanted to somehow preserve some right against the mediators,
13 which I doubt, it probably makes sense to add that language
14 from the local rule.

15 MR. MCCLAMMY: Thank you, Your Honor. Yes, we can
16 take care of that.

17 THE COURT: Okay.

18 MR. MCCLAMMY: And we'll submit a revised form of
19 order.

20 THE COURT: Okay. And then finally -- and this is
21 -- this may or may not be a more controversial point.

22 Paragraph 3 lays out the disputes that the -- that
23 are authorized to be mediated between the non-federal public
24 claimants on the one hand and the private claimants on the
25 other as to the allocation of value, proceeds available from

1 the debtors' estates, and then it lays out in more general
2 terms that they may need to consider a variety of concepts
3 and issues, including, without limitation, various sources
4 of value for the estates, various claims of persons or
5 entities who are not mediation parties, and different modes
6 and methods of allocation.

7 And one could say that the debtors might be
8 raising the point that I'm about to raise here, but it does
9 -- this just refers to claims, and while the debtors have
10 turned over in broad brush the estates resources and value
11 to alleviating the opioid crisis, one of the functions that
12 I think everyone would agree that the debtors perform is
13 providing pain alleviation medicine, which one properly
14 administered, has an important role. For example, to
15 veterans who have been injured and are being properly
16 treated for chronic pain.

17 And one could read this paragraph to assume that
18 all that's being taken into account here and perhaps
19 generally in the case is dealing with claims, but I wondered
20 whether it might be worthwhile to insert in this list of
21 including, without limitation concepts and issues, something
22 to the effect of the interests of private non-mediation
23 parties such as people who need properly administered pain
24 alleviation medicine produced by the debtors.

25 Now, one could say that the debtors in wanting to

1 preserve a business to dedicate its resources to alleviating
2 the opioid crisis might include that as part of their
3 business, but -- and therefore raise it in the mediation,
4 but I wanted to raise it before we enter this order, because
5 I think it's something that should not be ignored. And of
6 course the key phrase there is properly administered pain
7 alleviation medicine.

8 MR. MCCLAMMY: Thank you, Your Honor, that's
9 greatly appreciated.

10 The debtors certainly are no issue with including
11 language along those lines.

12 THE COURT: Okay.

13 MR. HUEBNER: Yeah. You know, we may want to
14 check along with (indiscernible - 10:15:56) people, because
15 obviously we don't control the administration of their
16 medicine, we're merely the manufacturer, and so I think that
17 it may be that we need (indiscernible - 10:16:05) words that
18 say, you know, the availability of FDA approved
19 medication --

20 THE COURT: Sure.

21 MR. HUEBNER: -- (indiscernible - 10:16:12)
22 administrate --

23 THE COURT: Right.

24 MR. HUEBNER: -- (indiscernible - 10:16:13),
25 because they're very sticky about stuff like that, but

1 obviously one of the things that we've all been talking
2 about all along in the case is insuring that there are not
3 more supply chain disruptions and the like in the FDA
4 approved medications that many people do rely on.

5 And obviously, you know, we do make a whole bunch
6 of things (indiscernible - 10:16:33) lost in the shuffle and
7 things like, you know, uncontroversial like Colace and
8 magnesium and (indiscernible - 10:16:42) and betadine and
9 the like, which are also I think of the FDA label over the
10 counter, I think we can probably put in language that would
11 be (indiscernible - 10:16:51).

12 THE COURT: Okay. I don't want this point to
13 unduly delay entry of this order, because as I said at the
14 beginning I think it's important for that process to get
15 going and I'm pleased that it is going to get going
16 promptly. In fact the order itself contemplates it gets
17 going in the next -- well this week, in the next few days,
18 but I did think it was important to raise the point.

19 So if the parties can't agree on specific language
20 I think you can certainly make the -- my concern known to
21 the mediators and just leave it at that, but if specific
22 language can be agreed that's even better. And --

23 MR. HUEBNER: Absolutely, Your Honor. We'll
24 hopefully do something sufficiently (indiscernible -
25 10:17:43) it won't attract too much trauma.

1 THE COURT: Okay. And I will -- we will email
2 these comments to Mr. McClammy so he'll have them so just in
3 case as is often the case it was hard for him to take notes
4 and be ready to respond to questions at the same time, he's
5 have them -- he'll have my mark up. But --

6 MR. MCCLAMMY: I appreciate it.

7 THE COURT: -- having raised those issues and I
8 think having the comments agreed at least in principle I
9 will grant the motion and enter the mediation order along
10 the lines that I've just discussed.

11 MR. MCCLAMMY: Thank you very much, Your Honor.

12 THE COURT: Okay. Thank you.

13 MR. HUEBNER: Nothing else from the debtors, Your
14 Honor. I think we have next up for March 18th.

15 THE COURT: Right. Exactly. So CourtCall, we're
16 done with the call. Thanks.

17 THE OPERATOR: Thank you.

18 (Whereupon these proceedings were concluded at 10:18
19 AM)

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I N D E X

RULINGS

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Motion to Shorten Time

7

Motion to Appoint/Motion for Entry of an Order

Appointing Mediators

15

C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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[help - obviously]

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